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OPEN MEETING ITEM ORIGINAL



MARC SPITZER - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

BRIAN C. MCNEIL
Executive Secretary

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ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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DATE: NOVEMBER 17, 2003

Arizona Corporation Commission

DOCKET NO: RR-02635B-03-0684

DOCKETED

NOV 17 2003

TO ALL PARTIES:

DOCKETED BY	<i>[Signature]</i>
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Enclosed please find the recommendation of Administrative Law Judge Marc Stern. The recommendation has been filed in the form of an Opinion and Order on:

BURLINGTON NORTHERN SANTA FE RAILWAY CO.
(GRADE-SEPARATED)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

NOVEMBER 26, 2003

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

DECEMBER 2, 2003 and DECEMBER 3, 2003

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

[Signature]

BRIAN C. MCNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MARC SPITZER, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 THE ARIZONA DEPARTMENT OF
10 TRANSPORTATION TO CONSTRUCT A
11 GRADE-SEPARATED CROSSING OF THE
12 BURLINGTON NORTHERN AND SANTA FE
13 RAILWAY AT OLIVE AVENUE OVER 75TH AND
14 GRAND AVENUES, IN THE CITY OF PEORIA,
15 MARICOPA COUNTY, ARIZONA.

DOCKET NO. RR-02635B-03-0684

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARING: November 6, 2003
12 PLACE OF HEARING: Phoenix, Arizona
13 ADMINISTRATIVE LAW JUDGE: Marc E. Stern
14 APPEARANCES: Mr. Timothy Sabo, Staff Attorney, Legal
15 Division, on behalf of the Utilities Division of
the Arizona Corporation Commission.

16 **BY THE COMMISSION:**

17 On September 18, 2003, the Arizona Department of Transportation ("ADOT") filed with the
18 Arizona Corporation Commission ("Commission") a request for the Burlington Northern and Santa
19 Fe Railway Company ("Railroad") to construct a grade-separated crossing at Olive Avenue over the
20 Railroad's tracks at the intersection of 75th and Grand Avenues, in the City of Peoria, Maricopa
21 County, Arizona ("Application").

22 On October 17, 2003, by Procedural Order, the Application was set for a hearing and ADOT
23 was ordered to notify any interested party of the Application and the hearing.

24 On October 27, 2003, ADOT filed certification that notice had been provided pursuant to the
25 terms of the Procedural Order.

26 On November 6, 2003, a full public hearing was held before a duly authorized Administrative
27 Law Judge of the Commission at its offices in Phoenix, Arizona. At the conclusion of the hearing,
28 the matter was taken under advisement pending submission of a Recommended Opinion and Order to

1 the Commission.

2 * * * * *

3 Having considered the entire record herein and being fully advised in the premises, the
4 Commission finds, concludes, and orders that:

5 **FINDINGS OF FACT**

6 1. On September 18, 2003, ADOT filed an Application in which it requested an Opinion
7 and Order from the Commission to approve an agreement between ADOT and the Railroad for the
8 construction of a grade-separated crossing at Olive Avenue over the track of the Railroad at the
9 intersection of 75th and Grand Avenues in Peoria, Maricopa County, Arizona.

10 2. On October 27, 2003, ADOT filed certification that notice had been provided by
11 registered U.S. mail of the Application and hearing thereon.

12 3. A hearing was held as scheduled on November 6, 2003.

13 4. The Application provides for the construction of an overpass at Olive Avenue
14 extending above and over the track of the Railroad and the intersection of 75th and Grand Avenues in
15 Peoria. Improvements to the flashing lights and gates at the crossing will be made pursuant to the
16 agreement.

17 5. Staff testified that the apportionment for the cost of the overpass as provided in the
18 Application will be funded by ADOT and with federal funding.

19 6. After construction of the grade-separated crossing, the Railroad will not be responsible
20 to maintain the grade-separated crossing in accordance with A.A.C. R14-5-104 because the Olive
21 Avenue roadway overpass will be maintained by ADOT and/or Peoria.

22 7. Staff has recommended that the Application be approved.

23 **CONCLUSIONS OF LAW**

24 1. The Commission has jurisdiction over the parties and over the subject matter of the
25 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and
26 40-337.01.

27 2. Notice of the Application was provided in accordance with the law.

28 3. The construction of the grade-separated crossing at the intersection of Olive Avenue

with 75th and Grand Avenues in Peoria, Arizona, is necessary for the public's convenience and safety.

4. The Application should be approved as recommended by Staff.

ORDER

IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application is hereby granted.

IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway Company shall notify the Commission, in writing, within ten days of both the commencement and the completion of the grade-separated crossing, pursuant to A.A.C. R14-5-104.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2003.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

MES:mlj

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2 RAILWAY COMPANY

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